

THE OFFICE OF REGULATORY STAFF

SURREBUTTAL TESTIMONY

OF

CHRISTOPHER J. ROZYCKI

MARCH 13, 2018



DOCKET NO. 2017-354-C

**COMPLAINT AND PETITION FOR DECLARATORY ORDER
OF PAY TEL COMMUNICATIONS, INCORPORATED,
COMPLAINANT/PETITIONER V. LATTICE INCORPORATED,
DEFENDANT/RESPONDENT**

**SURREBUTTAL TESTIMONY OF
CHRISTOPHER J. ROZYCKI
ON BEHALF OF
THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF
DOCKET NO. 2017-354-C
IN RE: COMPLAINT AND PETITION FOR DECLARATORY ORDER OF
PAYTEL COMMUNICATIONS, INCORPORATED,
COMPLAINANT/PETITIONER V. LATTICE INCORPORATED,
DEFENDANT/ RESPONDENT**

Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Christopher J. Rozycki. I am employed by the State of South Carolina as the Director of Telecommunications for the South Carolina Office of Regulatory Staff ("ORS").

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN THIS PROCEEDING?

A. The purpose of my surrebuttal testimony is to reply to the testimony of Terry Whiteside on behalf of Lattice, Incorporated (Lattice) and the rebuttal testimony of J. Vincent Townsend on behalf of PayTel Communications, Inc. (PayTel), and to reiterate and make minor changes and additions to the position and recommendations of ORS in response to the Petition and Complaint of PayTel Communications, Inc. in this case. ORS provides this additional information to help the Commission reach a determination in this proceeding.

Q. AFTER REVIEWING THE TESTIMONY OF MR. WHITESIDE AND THE REBUTTAL TESTIMONY OF MR. TOWNSEND HAS YOUR POSITION AND RECOMMENDATION IN THIS CASE CHANGED?

A. No. My position and recommendation remain the same, and Mr. Whiteside's testimony gives me the opportunity to use one on my favorite sayings: If it looks like a duck, swims like a duck, and quacks like a duck then it is probably a duck. Lattice looks, swims, and quacks like an inmate service provider. Inmate service providers provide telephone service in confinement facilities and are required to hold a Certificate of Public Convenience and Necessity (CPCN) issued by the Commission prior to commencing operations from a confinement facility in South Carolina. Mr. Whiteside's testimony verifies that Lattice is an inmate service provider, and he readily admits that Lattice needs to obtain a certificate.

Q. MR. WHITESIDE STATES THAT LATTICE MISUNDERSTOOD THE LAW AND AS A RESULT MADE A MISTAKE WHICH IT IS NOW ATTEMPTING TO CORRECT. DO YOU HAVE ANY COMMENTS ON THIS MISTAKE AND ATTEMPT TO CORRECT?

A. I agree that Lattice has made a mistake which they now must correct. It is not clear from Mr. Whiteside's testimony how or when the correction will occur, nor is it clear that the correction Lattice is proposing will be adequate and lawful. Lattice has violated the law, and may still be violating the law by providing inmate service, generating revenue, failing to pay gross receipts and other fees, all while operating without a CPCN. Mr. Whiteside has not offered a remedy for this violation.

1 **Q. DO YOU HAVE ANY OTHER COMMENTS ABOUT THE TESTIMONY OF MR.**
2 **WHITESIDE?**

3 **A.** Yes, this complaint was filed over 90 days ago and while Mr. Whiteside claims
4 otherwise, Lattice has made no visible attempt to resolve or rectify the mistakes Mr.
5 Whiteside readily admits the company made. It appears that the Company continues to
6 provide service in violation of the law.

7 **Q. DID YOU REVIEW THE REBUTTAL TESTIMONY OF, MR. J. VINCENT**
8 **TOWNSEND AND DO YOU HAVE ANY COMMENTS?**

9 **A.** Yes. I reviewed Mr. Townsend's testimony and I agree with it. In particular he
10 draws attention to Mr. Whiteside's use of the terms "regulated telecommunications
11 service" and "non-regulated services." I agree with Mr. Townsend that it is up to this
12 Commission to determine "what constitutes 'regulated telecommunications services.'" I
13 recommend the Commission rule that all services provided by an inmate service provider
14 be designated as regulated telecommunications service, until a provider requests and the
15 Commission determines otherwise. It is not up to Lattice to make this determination on
16 their own or in the context of negotiating a contract with an inmate or confinement facility.

17 **Q. DOES ORS HAVE ANY CHANGES TO ITS EARLIER RECOMMENDATIONS**
18 **FOR COMMISSION ACTION IN RESPONSE TO THE PAYTEL COMPLAINT?**

19 **A.** Yes, here are the ORS recommendations including modifications:

20 First, that the Commission require Lattice to resubmit, within 30 days, its
21 application for a CPCN to operate as an Interexchange Carrier (IXC) and inmate service
22 provider in South Carolina;

1 Second, if the Commission approves the application of Lattice for a CPCN, then
2 the Commission should require Lattice to post a bond as required by S.C. Code Ann. Regs.
3 103-607 (2012)

4 Third, if the Commission does not approve the application of Lattice for a CPCN,
5 then the Commission should issue a cease and desist order

6 Fourth, that the Commission rule that all services provided by an inmate service
7 provider be designated as regulated telecommunications service, until a provider requests
8 and the Commission determines otherwise;

9 Fifth, the Commission should notify the inmate facilities where Lattice is under
10 contract and providing service that it is in violation of South Carolina law and operating a
11 telephone utility without proper authority (CPCN) from the Public Service Commission of
12 South Carolina;

13 Sixth, the Commission may wish to notify (or request that ORS notify) all South
14 Carolina inmate or confinement facilities, the South Carolina Sheriff's Association, and
15 the South Carolina Jail Administrators that inmate service providers in South Carolina are
16 Telephone Utilities under South Carolina law and must possess a CPCN to operate in the
17 State; and

18 Seventh, the Commission may wish to request that ORS post a list of all inmate
19 service providers authorized (certificated) to operate in South Carolina.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A.** Yes, it does.